

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Case No. 09-17582
	)	Chapter 11
NACHSHON DRAIMAN,	)	Honorable John H. Squires
	)	
Debtor.	)	Hearing Date: May 12, 2011
	)	Hearing Time: 10:00 a.m.

**NOTICE ON HEARING ON THIRD AND FINAL APPLICATION FOR ALLOWANCE  
AND PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
OF UNGARETTI & HARRIS LLP, EXAMINER'S COUNSEL**

PLEASE TAKE NOTICE that on **Thursday, May 12, 2011 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge John H. Squires or any judge sitting in his stead, in Courtroom 680, 219 S. Dearborn St., Chicago, Illinois and shall then and there present the **Third and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Ungaretti & Harris LLP, Examiner's Counsel**, (the "Application"), at which time and place you may, but need not appear.

The Application seeks (A) the allowance and payment by the Debtor of interim compensation of \$8,319.50 for 21.50 hours of actual, necessary professional services rendered to Patrick J. O'Malley, Examiner for the Bankruptcy Estate of Nachshon Draiman, Debtor, and reimbursement of actual, necessary expenses of \$360.95 incurred in connection with those services between December 17, 2010 and April 30, 2011, and (B) the allowance of final compensation of \$83,804.50 and final reimbursement of expenses totaling \$734.79 between May 3, 2010 and April 30, 2011.

You may obtain a copy of the Application by (1) visiting the Office of the Clerk of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division at 219 S. Dearborn Street, Chicago, Illinois 60604; (2) accessing the Court's electronic docket for this case via its PACER website at <https://ecf.ilnb.uscourts.gov/cgi-bin/login.pl>; or (3) contacting Patrick F. Ross, counsel for Patrick J. O'Malley, Examiner by email (pfross@uhlaw.com) or telephone (312-977-4126).

Dated: May 5, 2011

UNGARETTI & HARRIS, LLP

By: /s/ Patrick F. Ross  
One of its attorneys

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**CERTIFICATE OF SERVICE**

I, Patrick F. Ross, the undersigned attorney, hereby certify that on May 5, 2011, I electronically filed the **Notice of Hearing** and the **Third and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Ungaretti & Harris LLP, Examiner's Counsel** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following individuals:

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and I hereby further certify that on May 5, 2011, I mailed by first class U.S. mail the **Notice of Hearing** and the **Third and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Ungaretti & Harris LLP, Examiner's Counsel** to the following non-registered participants:

*(see attached Master Service List)*

/s/ Patrick F. Ross

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Case No. 09-17582
	)	Chapter 11
NACHSHON DRAIMAN,	)	Honorable John H. Squires
	)	
Debtor.	)	Hearing Date: May 12, 2011
	)	Hearing Time: 10:00 a.m.

**THIRD AND FINAL APPLICATION FOR ALLOWANCE AND  
PAYMENT OF COMPENSATION AND REIMBURSEMENT OF  
EXPENSES OF UNGARETTI & HARRIS LLP, EXAMINER'S COUNSEL**

NOW COMES R. Scott Alsterda and Ungaretti & Harris LLP ("U&H"), counsel for Patrick J. O'Malley, as Examiner (the "Examiner") for the Bankruptcy Estate of Nachshon Draiman, Debtor (the "Debtor"), pursuant to Section 330 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 5082-1 of the Bankruptcy Court for the Northern District of Illinois and requests the entry of an order granting U&H's third and final application for allowance and payment of compensation and reimbursement of expenses in the above-captioned case (the "Final Application").

In its Final Application, U&H requests (A) the allowance and payment by the Debtor of \$8,319.50 as compensation for services rendered to the Examiner and \$360.95 as reimbursement of expenses advanced on behalf of the Examiner during the period December 17, 2010 through April 30, 2011 (the "Application Period"), and (B) the allowance of final compensation totaling \$83,804.50 and final reimbursement of expenses totaling \$734.79 between May 3, 2010 and April 30, 2011.

In support of the Final Application, U&H states as follows:



### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider the Final Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), and (M).

3. The statutory predicates for the relief requested herein are Section 330 of the Bankruptcy Code, Bankruptcy Rule 2016(a), and Bankruptcy Court for the Northern District of Illinois Local Rule 5082-1.

### **BACKGROUND**

4. On May 14, 2009 (the “Petition Date”), Nachshon Draiman (the “Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code. As a debtor in possession, the Debtor generally has the rights, powers, and duties of a chapter 11 trustee pursuant to Section 1107(a) of the Bankruptcy Code.

5. On or about February 22, 2010, one of the Debtor’s creditors, Dynegy Marketing and Trade (“Dynegy”), filed a Motion to Appoint an Examiner [Docket No. 256]. On or about March 9, 2010, the Court entered an Order Directing the U.S. Trustee to Appoint an Examiner [Docket No. 272] (the “Examiner Appointment Order”). The Examiner Appointment Order directed the U.S. Trustee to “appoint an examiner with the power to conduct an investigation of the debtor . . . and, as soon as practicable, file with the Court a report of the examiner’s findings.” (Exam. Appt. Order ¶ 1.)

6. On or about March 16, 2010, the U.S. Trustee appointed the Examiner subject to the Court’s approval [Docket No. 274]. The Examiner accepted the appointment, and the Court

entered an Order Approving Appointment of Examiner [Docket No. 275] on or about March 16, 2010.

7. Upon his appointment, the Examiner commenced his investigation. Soon thereafter, the Examiner determined that he required legal counsel in order to complete his investigation and report. On May 12, 2010, the Examiner filed the Examiner's Application to Employ Ungaretti & Harris LLP as Legal Counsel [Docket No. 294]. On May 20, 2010, the Court entered its Order Authorizing Examiner's Employment of U&H as Legal Counsel [Docket No. 298], effective retroactively to May 3, 2010.

8. On July 6, 2010, the Examiner filed his Preliminary Report [Docket No. 317].

9. On July 28, 2010, U&H filed its First Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses [Docket No. 357] (the "First Application"), requesting compensation in the amount of \$18,387.00 for 39.0 hours of legal services and reimbursement of \$7.10 in expenses incurred between May 3, 2010 and July 12, 2010.

10. On or about August 30, 2010, the Court entered an order granting the First Application [Docket No. 384] and authorizing and directing the Debtor to pay U&H compensation in the amount of \$18,387.00 and reimburse U&H's expenses in the amount of \$7.10.

11. On December 13, 2010, the Examiner filed his Second Report [Docket No. 579].

12. On January 4, 2011, U&H filed its Second Interim Application for Allowance and Payment of Compensation and Reimbursement of Expenses [Docket No. 607] (the "Second Application"), requesting compensation in the amount of \$57,098.00 for 124.40 hours of legal

services and reimbursement of \$366.74 in expenses incurred between July 13, 2010, 2010 and December 16, 2010.

13. On or about January 25, 2011, the Court entered an order granting the Second Application [Docket No. 636], as subsequently superseded and replaced in its entirety by the Court's Amended Order [Docket No. 657] entered on or about March 8, 2011, which authorized and directed the Debtor to pay U&H compensation in the amount of \$57,098.00 and reimburse U&H's expenses in the amount of \$366.74.

14. On April 19, 2011, the Court entered its Memorandum Opinion [Docket No. 674] sustaining Dynegy's objections to the Debtor's Fourth Amended Chapter 11 Plan of Reorganization (the "Plan"), denying confirmation of the Plan, and setting a hearing on May 24, 2011 at 10:00 a.m. to determine whether the Debtor's case should be converted to Chapter 7 or dismissed. Subsequently, the Court moved that hearing to May 12, 2011 at 10:00 a.m.

#### **LEGAL SERVICES PERFORMED BY U&H**

15. Pursuant to Section 330 of the Bankruptcy Code, Local Bankruptcy Rule 5082-1, and the generally applicable criteria with respect to time, nature, extent, and value of services performed, all of U&H's services during the Application Period are compensable and the compensation requested is fair and reasonable. All of the legal services performed by U&H during the Application Period were required for the proper representation of the Examiner in the Debtor's bankruptcy case.

16. There has been no duplication of services by U&H partners or associates for which compensation is requested herein. In instances where two or more attorneys or paraprofessionals participated in any matter, joint participation was deemed necessary due to cost considerations or staffing considerations. U&H has thoroughly reviewed its billing report to

eliminate any non-compensable interoffice conferences of its professionals. However, U&H professionals have been required to conduct a limited number of conferences to provide effective legal representation to the Examiner as outlined in *In re Adventist Living Ctrs., Inc.*, 137 B.R. 701, 716 (Bankr. N.D. Ill. 1991). From the outset of this case, professionals at U&H were instructed to avoid recording time entries which contained “lumping,” as discussed in *In re Pettibone Corp.*, 74 B.R. 293, 302 (Bankr. N.D. Ill. 1987).

17. An itemized and detailed billing statement of U&H’s fees and hours organized by date and by professional during the Application Period is attached hereto as Exhibit A. The billing statement sets forth the day on which each service was rendered, the initials of the attorney, a description of the nature of the service rendered, the amount of time spent rendering each service, the hourly rate of the attorney, and the amount charged for each service. A summary of the attorney rates, hours billed, and compensation sought during the Application Period follows:

Name	Position	Hours	Rate (\$)	Amount (\$)
Alsterda, R. Scott	Partner	12.10	505.00	6,110.50
Ross, Patrick F.	Associate	9.40	235.00	2,209.00
TOTAL:		21.50	-	8,319.50

18. In general, all of U&H’s services during the Application Period related to assisting and counseling the Examiner during the conclusion of his investigation of the Debtor and his financial affairs. To comply with the requirements of Local Bankruptcy Rule 5082-1(B), U&H has divided its time during the Application Period into several categories and provides the following narrative summaries:

- A GENERAL CASE ADMINISTRATION: U&H provided 0.80 hours of services with a value of \$404.00 to the Examiner related to general case administration matters. These services included reviewing pleadings relating to a creditor’s motion to modify the stay and the Debtor’s November 2010 operating report so as to be able to inform and advise the Examiner.

- B CASINO DOCUMENT PRODUCTION: U&H provided 7.30 hours of services with a value of \$2,471.50 to the Examiner in connection with the subpoena and review of documents and records from five casinos. These services included review of records produced by the casinos, communications with the casinos' attorney to clarify the Examiner's understanding of the records, and revising the Examiner's memorandum summary of the casino records. These services were necessary to the Examiner's investigation of the Debtor's transfers.
- C DEBTOR'S PLAN: U&H provided 3.30 hours of services with a value of \$1,666.50 to the Examiner in connection with the Debtor's Fourth Amended Plan and Disclosure Statement. These services included reviewing memoranda submitted by the Debtor in support of the Plan and by Dynegey in opposition to the Plan, reviewing the Court's Memorandum Opinion denying confirmation of the Plan, informing and advising the Examiner regarding the Plan and denial of confirmation, and a court appearance on Dynegey's motion to reset the hearing on conversion or dismissal of this bankruptcy case.
- D DYNEGEY'S MOTION TO CONVERT: U&H provided 0.80 hours of services with a value of \$404.00 in connection with Dynegey's motion to convert or dismiss the Debtor's bankruptcy case. These services included reviewing the Debtor's response to Dynegey's motion, communicating with Dynegey's counsel regarding the Debtor's 2009 state and federal income tax returns, and informing and advising the Examiner.
- F. FEE APPLICATIONS: U&H provided 9.30 hours of services with a value of \$3,373.50 to the Examiner in connection with the preparation and presentment of fee applications on behalf of the Examiner and U&H. Specifically, U&H prepared each of the Examiner's and U&H's Second Interim Application for Compensation and Reimbursement of Expenses, appeared in court to present those applications, and communicated with the Examiner and the Debtor's counsel regarding the applications.

### **REIMBURSEMENT OF EXPENSES**

19. During the Application Period, U&H incurred \$360.95 of out of pocket expenses in connection with its representation of the Examiner for which it now requests reimbursement. All of U&H's expenses detailed in Exhibit A were billed "at cost."

20. All of the expenses were actually incurred by U&H and were necessary for the proper representation of the Examiner in this case. All the expenses incurred are specifically allocated to this case and do not represent general overhead or other expenses unrelated to this case.

**SUMMARY OF THE FIRST APPLICATION AND THE SECOND APPLICATION**

21. By this Final Application, U&H also seeks approval on a final basis of all compensation and reimbursement of expenses previously allowed and paid to U&H on an interim basis in connection with the First Application and the Second Application.

22. As stated above, U&H previously filed the First Application requesting \$18,387.00 of compensation for 39.0 hours of legal services and reimbursement of \$7.10 in expenses incurred between May 3, 2010 and July 12, 2010. U&H's principal activities during that period primarily involved assisting and advising the Examiner in the investigation and preparation of his preliminary report, including the following: reviewing pleadings and investigating relationships between the Debtor and proposed purchasers of the Debtor's nursing home; examining records of cash transfers between Debtor-controlled entities; and reviewing, revising, and advising the Examiner regarding his preliminary report.

23. Also as stated above, U&H previously filed the Second Application requesting \$57,098.00 of compensation for 124.40 hours of legal services and reimbursement of \$366.74 in expenses incurred between July 13, 2010 and December 16, 2010. U&H's principal activities during that time period primarily involved assisting and advising the Examiner in the investigation and preparation of his second report, including the following: reviewing and producing documents on behalf of the Examiner and preparing the Examiner for testimony in connection with Dynegy's motion to convert; drafting motions and subpoenas for multiple casinos' records in connection with the Examiner's investigation of transfers by the Debtor; reviewing, revising, and advising the Examiner regarding his second report; and reviewing pleadings and discovery and preparing the Examiner for testimony in connection with hearings

on confirmation of the Debtor's Plan. Additionally, U&H prepared and appeared at two hearings on the first fee applications of the Examiner and U&H during this time period.

**BASIS FOR RELIEF**

24. U&H prepared this Final Application in accordance with the guidelines established by Fed. R. Bankr. P. 2016 and Local Rule 5082-1. Although the Court has discretion in reviewing a fee petition, it should exercise its discretion with care and fairness in order to promote the goal of inducing competent and capable attorneys to practice in the bankruptcy court. *See In re Pettibone Corp.*, 74 B.R. 293, 306 (Bankr. N.D. Ill. 1987).

25. The detailed billing statement attached as Exhibit A describes the specific tasks performed, the attorney/employee performing the task, the number of hours billed for each task (divided into tenths of an hour), the number of hours billed by each attorney/employee, and the total amount charged for each attorney/employee.

26. U&H has endeavored to: (a) avoid lumping multiple tasks into a single entry; (b) minimize time spent on interoffice conferences, though at times, such conferences were necessary and unavoidable; and (c) provide detail about each task, such as the subject matter of each telephone conference, correspondence, document review, etc.

27. U&H's hourly rates for professionals and paraprofessionals are comparable to rates charged by other practitioners having the same amount of experience, expertise, and standing for similar services in comparable chapter 11 cases in the Northern District of Illinois.

28. U&H has at all times acted specifically in the best interests of the Examiner and the Debtor's bankruptcy estate. All services performed by U&H and all expenses incurred during the Application Period were reasonable and necessary for the preservation of the Debtor's bankruptcy estate.

**REQUEST FOR SHORTENED NOTICE**

29. U&H has provided seven days' notice of this Final Application by serving copies on (i) the office of the United States Trustee; (ii) the Debtor's counsel; (iii) all individuals registered with CM/ECF in this case; and (iv) all persons on the creditor mailing matrix in this case.

30. U&H requests that the Court approve the shortened notice provided of the Final Application. Pursuant to Bankruptcy Rule 9006(c)(1), the Court has discretion to approve shortened notice for cause shown. U&H submits that cause exists to approve shortened notice because the Debtor's case may be converted to Chapter 7 or dismissed on May 12, 2011, which would delay or preclude U&H's ability to receive compensation and reimbursement of its expenses.

**CONCLUSION**

31. U&H has not entered into an agreement or understanding of any kind, expressed or implied, with any entity to share in its compensation received or to be received by U&H for services rendered to the Examiner in this case.

32. The Final Application is U&H's final application. Accordingly, pursuant to Section 330 of the Bankruptcy Code, U&H may present the Final Application.

**WHEREFORE**, Ungaretti & Harris LLP respectfully requests that this Court to enter an order:

- (a) Granting the relief requested in this Final Application;
- (b) Approving the form and manner of shortened notice as set forth above and finding that the notice of this Final Application was sufficient and proper;
- (c) Approving U&H's fees in the amount of \$8,319.50 as reasonable compensation for actual, necessary legal services rendered to the Examiner between December 17, 2010 and April 30, 2011;



- (d) Approving U&H's out-of-pocket expenses in the amount of \$360.95 as actual, necessary expenses incurred in connection with the legal services rendered to the Examiner between December 17, 2010 and April 30, 2011;
- (e) Authorizing and directing the Debtor to pay U&H the sum of \$8,680.45, which represents the total of U&H's allowed fees (\$8,319.50) and expenses (\$360.95);
- (f) Approving on a final basis U&H's attorneys' fees totaling \$83,804.50 as reasonable compensation and costs totaling \$734.79 as reimbursement of actual, necessary expenses during the period May 3, 2010 through April 30, 2011.
- (g) For such other and further relief as this Court deems appropriate.

Respectfully submitted,

Dated: May 5, 2011

UNGARETTI & HARRIS LLP,

By: /s/ Patrick F. Ross

One of its attorneys

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